

# **State of Alaska FY2003 Governor's Operating Budget**

## **Department of Law Statehood Defense BRU/Component Budget Summary**

## **BRU/Component: Statehood Defense**

**(There is only one component in this BRU. To reduce duplicate information, we did not print a separate BRU section.)**

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### **Component Mission**

Mission statement appears at the department summary level.

### **Component Services Provided**

**ENDANGERED SPECIES ACT CASES:** These cases involve the efforts of the National Marine Fisheries Service to protect Columbia River fall chinook salmon, listed as endangered under the Endangered Species Act, by restricting chinook salmon harvest in Alaska. The state considers the restriction unreasonable because it will have an insignificant effect on the salmon population, which has been decimated by the dams on the river system.

The state closely follows federal regulations intended to protect the western stock of Steller sea lions, which has been listed as endangered. The National Marine Fisheries Service has imposed dramatic restrictions on fishing in federal waters, especially near-shore areas most accessible to fleets based in coastal Alaska towns and villages, although there is no scientific agreement that such restrictions are likely to have any effect on the sea lion population. The state follows the federal regulations to protect coastal fisheries and the state's authority to manage fisheries that occur in state waters.

**SUBMERGED LANDS CASES:** The State of Alaska took title to all the lands underlying navigable waters within its borders at statehood; under the Equal Footing Doctrine, such lands pass to new states automatically, as a matter of constitutional right. However, in response to the United States' reluctance to recognize the state's title, Alaska has been forced to protect its title in several instances.

**ACCESS CASES:** Because of the patchwork of land ownership in Alaska among the state, the United States, and private landowners, and because of the lack of public infrastructure, access is extremely important to the public. The state recently settled litigation against the United States on an RS2477 right-of-way, the Harrison Creek-Portage Creek Trail, securing a permanent right-of-way. The state is also close to settling an RS 2477 case in Southeast Alaska. Additionally, the state has several other cases where access is a primary issue, and the state periodically reviews proposed federal Public Use Management Plans to comment on public access issues. The state has also filed suit challenging the Forest Service's "Roadless Rule," regulations that prohibit building roads and timber harvests except in very limited circumstances in all roadless areas of National Forests.

**ANILCA CHALLENGES:** These cases constitute challenges by rural residents based on the priority granted them in Title VIII of the Alaska National Interest Lands Conservation Act for hunting and fishing for subsistence purposes. In addition, the department provides ongoing legal advice to the Department of Fish and Game as it works to implement dual management of subsistence resources, and closely follows the actions of the Federal Subsistence Board.

**PROTECTION OF SALMON RESOURCES:** The department is fighting to protect Alaska's salmon resources on several fronts. First, we provide legal advice to the Department of Fish and Game in the Pacific Salmon Treaty arena. In this capacity, we work closely with Alaska's treaty negotiators to develop strategy for treaty negotiations and implementation within the United States Section and bilaterally with the Government of Canada. Second, we handle litigation that arises out of the Pacific Salmon Treaty. Finally, we remain in litigation against the Pacific Northwest Indian Tribes in *United States v. Washington*. In this case, the Tribes seek a ruling that the treaties they entered with the United States in the 1850's entitle them to a share of the salmon caught in Southeast Alaska. The parties have filed a stipulation to stay the case as a result of the 1999 amendments to the Pacific Salmon Treaty recently agreed upon by the United States and Canada.

**REVIEW OF FEDERAL LEGISLATIVE, REGULATORY, AND ADMINISTRATIVE PROPOSALS:** The department frequently comments on and drafts amendments to bills before Congress on a wide range of resource related topics including amendments to the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation

Act, and the Endangered Species Act. The department also assists with state comments on federal proposals such as the Forest Service Roadless Initiative, and designation of new national monuments in Alaska.

### **Component Goals and Strategies**

The Statehood Defense group of the Department of Law litigates issues raised by conflicts between state and federal jurisdiction. The group handles a variety of complex cases that will have a profound and lasting impact on management of Alaska's natural resources. The state frequently must defend against encroachment by the federal government into areas traditionally regulated by the state.

2. To protect Alaska's salmon resources in the Pacific Salmon Treaty.
  - Southern U.S. treaty parties adhere to long-term agreement for the sharing of Chinook salmon.
  - Southern U.S. treaty parties adhere to the Habitat and Restoration Agreement commitment to protect and restore salmon habitat, and ensure adequate water quality and quantity for the safe passage of salmon to and from their natal streams.
3. To participate in the ESA process as it relates to Pacific salmon and litigate when needed to protect Alaska against unreasonable restrictions on harvest levels of salmon listed under the Endangered Species Act, when Alaska's incidental take has little measurable effect on the number of fish returning to spawn.
4. To protect access to state and private lands and on public waters across Alaska.
  - Alaska continues to litigate title to the RS 2477 rights-of-way, including the Harrison Creek-Portage Creek Trail and the Jualin Mine Road..
  - Alaska files suit or otherwise acts to protect access on navigable waters restricted by upland owners.
  - Alaska publishes maps and pamphlets to educate the public about their rights to access public waterways and easements as well as the limits on use of private uplands.
  - Alaskans are able to exercise their rights to access state and private lands through federal lands.
  - Alaska provides information to BLM that convinces it to declare waterways navigable within the survey windows it is completing.
  - Alaska is challenging the Forest Service's Roadless Rule.
5. To litigate to protect the State's title to navigable waters.

Alaska continues its suit in the United States Supreme Court to quiet title to the submerged lands underlying the marine waters of the Tongass National Forest and Glacier Bay National Park.

6. To continue to advise the Department of Fish and Game on federal subsistence issues and to provide regular advice on state interaction with the federal subsistence program
  - The federal subsistence program considers the state's comments on proposed regulations, places conservation first, and does not infringe upon the state's regulatory authority or unnecessarily restrict the use of the state's fish and game by qualified subsistence, sport, or commercial users under state law.
  - Protocols are developed to facilitate dual management by the state and federal programs.
7. To litigate or otherwise protect Alaska's jurisdiction to manage, protect, and use its own resources against challenges by or on behalf of the federal government.
  - Alaska will be free to regulate activities on navigable waters and on state and private lands without interference from the United States.

- Alaska will work cooperatively as partners with adjacent federal land managers as appropriate.

### **Key Component Issues for FY2002 – 2003**

No key issues.

### **Major Component Accomplishments in 2001**

On Access to state and private lands and on public waters across Alaska:

- Alaska continues to work towards resolution of litigation over its claim of title to the Jualin Mine RS 2477 road, and
  - quieted title to the Harrison Creek-Portage Creek RS 2477 trail.
- Alaska has continued to provide information and develop pamphlets for public distribution educating the public on its rights to access public waterways and easements, as well as the limits on use of private uplands.
- Alaska has educated individual property owners about public rights of access to public waterways.

On litigation to protect the State's title to navigable waters:

- Alaska continued litigation in its an original action in the United States Supreme Court to quiet title to all lands
  - underlying marine waters in Southeast Alaska, including those within Glacier Bay National Park and the Tongass National Forest.

On Protection of Salmon Resources:

- Alaska has provided comments on the draft biological opinion on the operation of the Columbia River Federal Power System and has provided comments to FERC expressing concern over a proposed spill swap plan that permits greater power generation by some northwest hydroelectric plants at the expense of fish passage.
- Alaska continues to act as a cooperating agency in the preparation of an Environmental Impact Statement (EIS)
  - addressing the coastwide salmon fishery.
- The department continued to advise the Department of Fish and Game on federal subsistence issues and to provide regular advice on state interaction with the federal subsistence program.
- The department prepared a Request for Reconsideration on the closure of three sportfisheries in Southeast Alaska
  - which has been accepted, and made contributions to the drafting of the state's comments in support of the successful Request for Reconsideration of the Federal Subsistence Board's decision to designate the entire Kenai Peninsula as rural.
- The department has assisted the Department of Fish and Game in commenting on two major environmental impact statements on federal groundfish fisheries off the Alaska coast, and a biological opinion analyzing the effect of state and federal fisheries on endangered Steller sea lions.
- The department has advised the Department of Fish and Game on the requirements of the federal Marine Mammal Protection Act and the federal Endangered Species Act with respect to commercial fisheries in Alaska.
- The department is in litigation against the United States challenging the Forest Service's Roadless Rule.

### **Statutory and Regulatory Authority**

AS 44.23.020

## Statehood Defense

### Component Financial Summary

*All dollars in thousands*

	FY2001 Actuals	FY2002 Authorized	FY2003 Governor
<b>Non-Formula Program:</b>			
<b>Component Expenditures:</b>			
71000 Personal Services	574.3	754.3	775.7
72000 Travel	17.8	14.4	14.4
73000 Contractual	313.6	300.3	300.3
74000 Supplies	10.1	26.4	26.4
75000 Equipment	10.5	0.0	0.0
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
<b>Expenditure Totals</b>	<b>926.3</b>	<b>1,095.4</b>	<b>1,116.8</b>
<b>Funding Sources:</b>			
1004 General Fund Receipts	919.8	1,095.4	1,116.8
1053 Investment Loss Trust Fund	4.7	0.0	0.0
1108 Statutory Designated Program Receipts	1.8	0.0	0.0
<b>Funding Totals</b>	<b>926.3</b>	<b>1,095.4</b>	<b>1,116.8</b>

### Estimated Revenue Collections

Description	Master Revenue Account	FY2001 Actuals	FY2002 Authorized	FY2002 Cash Estimate	FY2003 Governor	FY2004 Forecast
<b>Unrestricted Revenues</b>						
None.		0.0	0.0	0.0	0.0	0.0
<b>Unrestricted Total</b>		<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Restricted Revenues</b>						
Statutory Designated Program Receipts	51063	1.8	0.0	0.0	0.0	0.0
Investment Loss Trust Fund	51393	4.7	0.0	0.0	0.0	0.0
<b>Restricted Total</b>		<b>6.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>Total Estimated Revenues</b>		<b>6.5</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

## Statehood Defense

## Proposed Changes in Levels of Service for FY2003

None.

## Summary of Component Budget Changes

## From FY2002 Authorized to FY2003 Governor

*All dollars in thousands*

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
<b>FY2002 Authorized</b>	<b>1,095.4</b>	<b>0.0</b>	<b>0.0</b>	<b>1,095.4</b>
<b>Adjustments which will continue current level of service:</b>				
-Year 3 Labor Costs - Net Change from FY2002	19.1	0.0	0.0	19.1
<b>Proposed budget increases:</b>				
-Legal Secretary Reclassification	2.3	0.0	0.0	2.3
<b>FY2003 Governor</b>	<b>1,116.8</b>	<b>0.0</b>	<b>0.0</b>	<b>1,116.8</b>

## Statehood Defense

## Personal Services Information

Authorized Positions		Personal Services Costs		
	<u>FY2002</u>	<u>FY2003</u>		
	<u>Authorized</u>	<u>Governor</u>		
Full-time	9	10	Annual Salaries	598,093
Part-time	1	0	COLA	19,595
Nonpermanent	0	0	Premium Pay	0
			Annual Benefits	172,668
			<i>Less 1.85% Vacancy Factor</i>	(14,656)
			Lump Sum Premium Pay	0
<b>Totals</b>	<b>10</b>	<b>10</b>	<b>Total Personal Services</b>	<b>775,700</b>

## Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	1	0	0	0	1
Attorney III	3	0	0	0	3
Attorney IV	2	0	0	0	2
Attorney V	2	0	0	0	2
Law Office Assistant I	1	0	0	0	1
Paralegal II	1	0	0	0	1
<b>Totals</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>